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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

LATIA ALEXANDER, individually as heir
of ISIAH T. WILLIAMS, and in her
capacity as Special Administrator of the
Estate of ISIAH T. WILLIAMS,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, a political subdivision of
the State of Nevada; KERRY KUBLA, in his
individual capacity; BRICE CLEMENTS, in
his individual capacity; ALEX GONZALES,
in his individual capacity; RUSSELL
BACKMAN, in his individual capacity;
JAMES ROTHENBURG, in his individual
capacity; JAMES BERTUCCINI, in his
individual capacity; and DOES I-XX,
inclusive,

Defendants.

KERRY KUBLA,

Counterclaimant,

vs.

LATIA ALEXANDER in her capacity as
Special Administrator of the Estate of
ISIAH T. WILLIAMS,

Counterdefendant.

Case Number:

2:24-cv-00074-APG-NJK

**DEFENDANTS LVMPD, KERRY
KUBLA, BRICE CLEMENTS, ALEX
GONZALES, RUSSELL BACKMAN,
JAMES ROTHENBURG AND JAMES
BERTUCCINI'S ANSWER TO
PLAINTIFF'S COMPLAINT**

AND

**DEFENDANT KERRY KUBLA'S
COUNTERCLAIM AGAINST LATIA
ALEXANDER AS THE SPECIAL
ADMINISTRATOR OF THE ESTATE
OF ISIAH T. WILLIAMS**

1 Defendants Las Vegas Metropolitan Police Department (“LVMPD”), Kerry Kubla,
2 Brice Clements, Alex Gonzales, Russell Backman, James Rothenburg and James Bertuccini
3 (“Answering Defendants”), by and through their counsel, Marquis Aurbach, hereby answer
4 Plaintiff’s Complaint (ECF No. 1) on file herein, admits, denies and alleges as follows:

5 **PARTIES, JURISDICTION AND VENUE**

6 1. These Answering Defendants are without sufficient knowledge to form an
7 opinion as to the truth of Plaintiff’s allegations contained in paragraphs 1, 2, 10 and 11 of
8 the Plaintiff’s Complaint, and therefore deny the remaining allegations.

9 2. These Answering Defendants admit the allegations contained in paragraphs
10 3, 4, 5, 6, 7, 8, 9, 12, 13, 14 and 15 of the Plaintiff’s Complaint.

11 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

12 3. These Answering Defendants deny the allegations contained in paragraphs
13 16, 21, 27, 29, 31, 32, 36 and 39 of the Plaintiff’s Complaint.

14 4. These Answering Defendants admit the allegations contained in paragraphs
15 17, 18 and 24 of the Plaintiff’s Complaint.

16 5. These Answering Defendants are without sufficient knowledge to form an
17 opinion as to the truth of Plaintiff’s allegations contained in paragraphs 19, 20, 22, 23, 25,
18 26, 28, 30, 33, 34, 35, 37 and 38 of the Plaintiff’s Complaint, and therefore deny the
19 remaining allegations.

20 **FIRST CLAIM FOR RELIEF**

21 **(VIOLATION OF FEDERAL CIVIL RIGHTS UNDER 42 U.S.C. §1983 ET SEQ. –**
22 **FOURTH AMENDMENT)**

23 6. These Answering Defendants are without sufficient knowledge to form an
24 opinion as to the truth of Plaintiff’s allegations contained in paragraphs 40, 41, 53 and 54 of
25 the Plaintiff’s Complaint, and therefore deny the remaining allegations.

26 7. These Answering Defendants admit the allegations contained in paragraphs
27 42, 43, 45, 46 and 47 of the Plaintiff’s Complaint.
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1 8. These Answering Defendants deny the allegations contained in paragraphs
2 44, 48, 49, 50, 51, 52, 55 and 56 of the Plaintiff's Complaint

3 **SECOND CLAIM FOR RELIEF**

4 **(VIOLATION OF FEDERAL CIVIL RIGHTS 42 U.S.C. §1983 ET SEQ. –**
5 **FOURTEENTH AMENDMENT)**

6 9. These Answering Defendants are without sufficient knowledge to form an
7 opinion as to the truth of Plaintiff's allegations contained in paragraphs 57 and 58 of the
8 Plaintiff's Complaint, and therefore deny the remaining allegations.

9 10. These Answering Defendants deny the allegations contained in paragraphs
10 59, 60, 61, 62, 63, 64, 65, 66, 67 and 68 of the Plaintiff's Complaint.

11 **THIRD CLAIM FOR RELIEF**

12 **(VIOLATIONS OF NEVADA CONSTITUTION/CONSTITUTIONAL TORT)**

13 11. These Answering Defendants are without sufficient knowledge to form an
14 opinion as to the truth of Plaintiff's allegations contained in paragraphs 69, 70, 72, 74, 82
15 and 83 of the Plaintiff's Complaint, and therefore deny the remaining allegations.

16 12. These Answering Defendants admit the allegations contained in paragraphs
17 71, 73, 75 and 80 of the Plaintiff's Complaint.

18 13. These Answering Defendants deny the allegations contained in paragraphs
19 76, 77, 78, 79, 81, 84, 85 and 86 of the Plaintiff's Complaint

20 **FOURTH CAUSE OF ACTION**

21 **(ASSAULT AND BATTERY/WRONGFUL DEATH AND SURVIVORSHIP)**

22 14. These Answering Defendants are without sufficient knowledge to form an
23 opinion as to the truth of Plaintiff's allegations contained in paragraphs 87, 88, 91, 93 and 94
24 of the Plaintiff's Complaint, and therefore deny the remaining allegations.

25 15. These Answering Defendants deny the allegations contained in paragraphs
26 89, 90, 92, 95 and 96 of the Plaintiff's Complaint.

FIFTH CAUSE OF ACTION

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – WRONGFUL DEATH AND SURVIVORSHIP)

16. These Answering Defendants are without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 97, 98, 99, 102, 104, and 105 of the Plaintiff's Complaint, and therefore deny the remaining allegations.

17. These Answering Defendants deny the allegations contained in paragraphs 100, 101, 103, 106 and 107 of the Plaintiff's Complaint.

SIXTH CAUSE OF ACTION

(NEGLIGENCE – WRONGFUL DEATH AND SURVIVORSHIP)

18. These Answering Defendants are without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 108, 109, 110, 115 and 116 of the Plaintiff's Complaint, and therefore deny the remaining allegations.

19. These Answering Defendants deny the allegations contained in paragraphs 111, 112, 113, 114, 117 and 118 of the Plaintiff's Complaint.

SEVENTH CAUSE OF ACTION

(MONELL CLAIMS)

20. These Answering Defendants are without sufficient knowledge to form an opinion as to the truth of Plaintiff's allegations contained in paragraphs 119, 126 and 132 of the Plaintiff's Complaint, and therefore deny the remaining allegations.

21. These Answering Defendants admit the allegations contained in paragraphs 120 and 121 of the Plaintiff's Complaint.

22. These Answering Defendants deny the allegations contained in paragraphs 122, 123, 124, 125, 127, 129, 130, 131, 133 and 134 of the Plaintiff's Complaint.

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AFFIRMATIVE DEFENSES**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's suit fails to state a claim for relief as she failed to allege a violation of a right, privilege, or immunity secured by the United States Constitution or by the laws of the United States.

SECOND AFFIRMATIVE DEFENSE

The Answering Individual Defendants are protected by qualified immunity.

THIRD AFFIRMATIVE DEFENSE

The complained of acts of these Answering Defendants were justified and privileged under the circumstances.

FOURTH AFFIRMATIVE DEFENSE

At all times mentioned in Plaintiff's Complaint, these Answering Defendants acted in good faith belief that their actions were legally justifiable.

FIFTH AFFIRMATIVE DEFENSE

LVMPD did not implement an unconstitutional custom, practice, or policy.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff's claims of constitutional violation are unsupported in both fact and law, as Plaintiff has not alleged sufficient basis from which a constitutional interest might arise in conjunction with the alleged actions.

SEVENTH AFFIRMATIVE DEFENSE

To the extent Plaintiff's causes of actions against these Answering Defendants sound in negligence, no recovery can be predicated upon 42 USCA §1983.

EIGHTH AFFIRMATIVE DEFENSE

Any injuries allegedly sustained by Plaintiff were the result of Plaintiff/Decedent Isaiah T. Williams' own negligence and/or actions.

NINTH AFFIRMATIVE DEFENSE

Plaintiff cannot recover punitive or exemplary damages against Defendant LVMPD on her §1983 claims or any state law claims.

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TENTH AFFIRMATIVE DEFENSE

The state law claims and each of them are barred by NRS 41.032.

ELEVENTH AFFIRMATIVE DEFENSE

The claims and each of them are barred by Plaintiffs' failure to plead those claims with particularity.

TWELFTH AFFIRMATIVE DEFENSE

These Answering Defendants reserve the right to amend these Affirmative Defenses as discovery unfolds and new information is discovered.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's state law claims are capped at \$100,000 pursuant to NRS 41.025.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's state law claims involve discretionary functions for which these Answering Defendants are immune pursuant to NRS 41.032.

WHEREFORE, these Answering Defendants pray for judgment as follows:

1. That Plaintiff takes nothing by virtue of her Complaint on file herein, that the same be dismissed with prejudice;
2. For an award of reasonable attorney fees and costs of suit incurred in the defense of this action; and
3. For such other and further relief as this Court may deem just and proper in the premises.

Dated this 5th day of February, 2024.

MARQUIS AURBACH

By s/Craig R. Anderson
Craig R. Anderson, Esq.
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10001 Park Run Drive
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Attorney(s) for Defendants LVMPD, Kerry
Kubla, Brice Clements, Alex Gonzales,
Russell Backman, James Rothenburg and

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James Bertuccini

**DEFENDANT KERRY KUBLA'S COUNTERCLAIM AGAINST PLAINTIFF
COUNTERDEFENDANT LATIA ALEXANDER**

Defendant/Counterclaimant Kerry Kubla ("Ofc. Kubla"), by and through his attorneys of record, Marquis Aurbach, hereby file his counterclaim against Plaintiff/Counterdefendant Latia Alexander, individually as heir of Isaiah T. Williams and in her capacity as Special Administrator of the Estate of Isaiah T. Williams ("Counterdefendant") and allege as follows:

GENERAL ALLEGATIONS

1. Counterdefendant Latia Alexander has filed an action for damages in connection with an incident which occurred on January 10, 2012, in Clark County, Nevada. This Complaint bears case number 2:24-cv-00074-APG-NJK. It is incorporated herein by reference.

2. This Court has subject matter jurisdiction over this action pursuant to 28 USC § 1367 (supplemental jurisdiction over state law claims).

3. Upon information and belief, Counterdefendant Latia Alexander as the Administrator of the Estate of Isaiah Williams. She is being sued in her capacity as the administrator of the estate.

4. At all times relevant to this action, Counterclaimant Kubla was acting in the course and scope of his employment as a Las Vegas Metropolitan Police Department SWAT Officer during the subject incident.

5. Counterclaimant Kubla is suing in his individual capacity.

6. At all times relevant to this action, Counterclaimant Kubla was a resident and citizen of the State of Nevada, County of Clark.

7. On January 10, 2022, at approximately 5:00 a.m. LVMPD's SWAT unit served a lawful search warrant on Apartment 1125 at 3050 South Nellis Boulevard in Las Vegas, Nevada.

8. The SWAT unit was dressed in full tactical gear and easily identifiable as law enforcement officers.

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1 9. At approximately 4:59:38 a.m. the SWAT team approached Apartment 1125
2 on foot.

3 10. At approximately 4:59:57 a.m., SWAT Sergeant Russell Backman began
4 verbally announcing the service of the search warrant on Apartment 1125 via a bullhorn.

5 11. At approximately 5:00:03 a.m. SWAT officer James Bertuccini inserted a
6 stun stick distract though the northwest facing window.

7 12. At approximately 5:00:11 a.m. Officer Hoskins successfully breached the
8 door with a ram. Officer Hoskins rammed the door loudly several times before breaching
9 occurred.

10 13. At approximately 5:00:13 a.m., Counterclaimant Kubla and the entry team
11 began to enter Apartment 1125.

12 14. The SWAT unit was lawfully on the property and entered the residence
13 lawfully after performing a reasonable knock and announce.

14 15. At approximately 5:00:14 a.m., the moment the SWAT unit entered the
15 apartment, Isaiah Williams began firing at the officers with a firearm.

16 16. Isiaih Williams fired 18-rounds at the SWAT unit after entry.

17 17. Counterclaimant Kubla sustained multiple gunshot wounds to both his right
18 and left arm and his right hip. Officer Kubla was also struck once in the chest; however, the
19 round was stopped by his ballistic vest.

20 18. In response to Isaiah Williams's rounds, several members of the SWAT unit
21 returned fire striking and killing Isaiah Willaims.

22 19. Counterclaimant Kubla has incurred damages in excess of \$75,000.

23 **FIRST CLAIM FOR RELIEF—ASSAULT/BATTERY**

24 20. Counterclaimant Kubla, in his individual capacity, re-alleges and
25 incorporates by reference each and every allegation contained in Paragraphs 1-13 as if fully
26 set forth herein.

27 21. Plaintiff/Counterdefendant the Estate of Isaiah Willaims willfully and
28 unlawfully used force or violence upon Kubla.

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1 22. Counterclaimant Kubla did not consent to Isaiah William's actions.

2 23. The acts of Isaiah Willaims were taken with oppression, fraud, and malice
3 and/or his conduct was motivated by evil motive or intent, or involved reckless or callous
4 indifference and Counterclaimant Kubla seeks punitive damages.

5 24. Counterclaimant Kubla is entitled to attorneys fees, cost of suit, and interest.

6 **SECOND CLAIM FOR RELIEF --NEGLIGENCE**

7 25. Counterclaimant Kubla repeats and realleges the above paragraphs as though
8 fully set forth herein.

9 26. Isaiah Williams owed a duty of care to Counterclaimant Kubla to submit to
10 his lawful authority during the execution of the lawful search warrant.

11 27. Isaiah Williams breached that duty by firing at Counterclaimant Kubla
12 despite the SWAT teams lawful knock and announce of their presence.

13 28. As a result of Isaiah Williams's breach, he shot and severely injured
14 Counterclaimant Kubla causing him significant pain and suffering.

15 29. Isaiah Williams's actions were the proximate cause of Counterclaimant
16 Kubla's injuries and pain and suffering.

17 30. The acts of Isaiah Willaims were taken with oppression, fraud, and malice
18 and/or his conduct was motivated by evil motive or intent, or involved reckless or callous
19 indifference and Counterclaimant Kubla seeks punitive damages.

20 31. Counterclaimant Kubla is entitled to attorneys fees, cost of suit, and interest.

21 WHEREFORE, Counterclaimant prays for judgment as follows:

22 1. For compensatory damages for physical injury; emotional distress; and pain
23 and suffering to be determined at trial but exceeding \$1,000,000;

24 2. For punitive damages;

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1 3. For reasonable costs, interest and attorney's fees; and

2 4. Any further relief the Court deems appropriate.

3 Dated this 5th day of February, 2024.

4 MARQUIS AURBACH

5
6 By: s/Craig R. Anderson
7 Craig R. Anderson, Esq.
8 Nevada Bar No. 6882
9 10001 Park Run Drive
10 Las Vegas, Nevada 89145
11 Attorney(s) for

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that I electronically filed the foregoing (1) **DEFENDANTS**
14 **LVMPD, KERRY KUBLA, BRICE CLEMENTS, ALEX GONZALES, RUSSELL**
15 **BACKMAN, JAMES ROTHENBURG AND JAMES BERTUCCINI'S ANSWER TO**
16 **PLAINTIFF'S COMPLAINT; AND (2) DEFENDANT KERRY KUBLA'S**
17 **COUNTERCLAIM AGAINST PLAINTIFF AND DEFENDANT KERRY KUBLA'S**
18 **COUNTERCLAIM AGAINST LATIA ALEXANDER AS THE SPECIAL**
19 **ADMINISTRATOR OF THE ESTATE OF ISIAH T. WILLIAMS** with the Clerk of the
20 Court for the United States District Court by using the court's CM/ECF system on the 5th
21 day of February, 2024.

22 ☒ I further certify that all participants in the case are registered CM/ECF users
23 and that service will be accomplished by the CM/ECF system.

24 ☒ I further certify that some of the participants in the case are not registered
25 CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid,
26 or have dispatched it to a third party commercial carrier for delivery within 3 calendar days
27 to the following non-CM/ECF participants: n/a
28

s/Sherri Mong
an employee of Marquis Aurbach